



Information Bulletin



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BMPs In Resource Protection Areas

Can water quality best management practices be built in Resource Protection Areas?

Regulatory Requirements:

Sections 4.2.8.a.1 and 4.2.8.a.2 of the Regulations state:

- *The following stormwater management options shall be considered to comply with [the stormwater management criteria] of these regulations: (1) incorporation on the site of best management practices that achieve the required control (and) (2) compliance with a locally adopted regional stormwater management program.*
- *[A] combination of a buffer area not less than 50 feet in width and appropriate best management practices located landward of the buffer area . . . at least the equivalent of the 100 foot buffer area may be employed in lieu of the 100 foot buffer.*
- *Exceptions . . . may be granted, provided that: (i) exceptions to the criteria shall be the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions . . . shall be imposed as necessary so that the purpose and intent of the Act is preserved.*

This issue concerns structural water quality best management practices (BMPs). Could structural water quality BMPs be classified as water-dependent facilities and therefore be allowed by right in an RPA (as provided for by § 4.3.A.i)? The Regulations define water-dependent facilities as those "that cannot exist outside of the [RPA] and must be located on the shoreline by reason of the intrinsic nature of its operation [§ 1.4, emphasis ours]. BMPs can exist outside of the RPA. Most do not require flowing water to properly function, nor do they depend on the water bodies they're designed to protect. These generalities clearly make BMPs non-water-dependent.

Just as for any other structure, **the Regulations clearly allow for the placement of BMPs in the landward 50 feet of the buffer** with appropriate equivalency measures [§ 4.3.B.1].

But what about putting BMPs in the "seaward" 50 feet? Here again, as with any other proposed disturbance, **an exception must be granted for any disturbance in the seaward 50 feet of the buffer**. Poor candidates for such an exception are small, structural on-site water quality BMPs not a part of an approved stormwater management (SWM) program. Those BMPs generally only provide a small scale benefit, usually just for the site in question. On the other hand, large regional facilities provide the best,



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